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In The

SUPREME COURT OF THE UNITED STATES OF AMERICA

Supreme Court, U.S.
FILED
OCT 25 2010
OFFICE OF THE CLERK

No. 10-144

Heirs And Beneficiaries Of Marjorie C. Schneller, James D. Schneller, trustee ad litem; Estate Of Marjorie C. Schneller, James D.Schneller, trustee ad litem; Estate Of Marjorie C. Schneller, Marjorie Zitomer, personal representative; Estate Of George H. Schneller, James D. Schneller, personal representative

v.

Able Home Care Inc., Marianne Lilienthal, Holly Nelson, Jane Doe 1, respondents

James D. Schneller, petitioner

PETITION FOR REHEARING

Petition of Plaintiff James D. Schneller for Rehearing of Denial of Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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In The

SUPREME COURT OF THE UNITED STATES OF AMERICA

No. 10-144

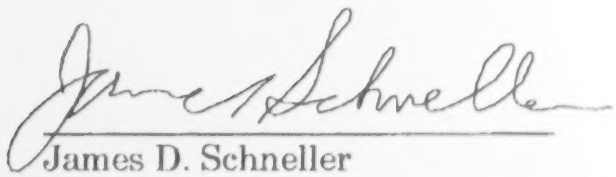
James D. Schneller, et al

v.

Able Home Care Inc., Marianne Lilienthal, Holly Nelson, et al, respondents

CERTIFICATE OF COMPLIANCE

I, James D. Schneller, petitioner in the above captioned matter, certify that this petition for rehearing is restricted to intervening circumstances of a substantial or controlling effect, and to other substantial grounds not previously presented, and that it is presented in good faith and not for delay.



James D. Schneller

Date: October 25, 2010

Petitioner, the plaintiff below, pursuant to Supreme Court Rule 44 and Supreme Court Rule 21, petitions the Court for rehearing of the Order which denies the petition, and motions for consolidation of the case with another petition for writ of certiorari, stating as follows:

The Court has denied plaintiff's petition for writ of certiorari.

The petition raises egregious error on the part of the trial Court and the Circuit Court of Appeals.

A petition for writ of certiorari is filed this day from a subsequent Third Circuit decision affirming the District Court's ending of a case properly filed in the same cause of action under Pennsylvania's savings statute 42 Pa.C.S. §5535 which allows re-filing of cases not previously decided on the merits.

Petitioner's experience with said savings statute has now, for a third time,[1] ended, rather than in a fair trial, as is the intent of the law, in

[1] Petition for Writ of Certiorari No. 10-227 denied October 18, 2010 , Petition for Writ of Certiorari No. 10-120 scheduled for conference of October 29, 2010

circumstances exhibiting severe bias and partiality, coupled with overt and erroneous precluding of the utilization of the savings statute by way of errors of law constituting obstruction or at the least, prevention of suit.

Appellant, the sole living plaintiff, applies for rehearing because he believes that not only have certain facts been misapprehended by the Courts, and because conflict has occurred in contrast to other decisions of the Courts, but also because there have been intervening circumstances of a substantial effect, and other reasons, as follow:

Newly in support of the verity and mishandling of the underlying case, and the trial Court itself's perception of the case as jurisdictionally valid, even though ending it, the trial Judge in the second filed case No. 09-5747, affirmed at USCA 3d 10-1681, ordered, on June 29, 2010 that the petitioner's motion for alleviation of cost of transcript is granted. Petitioner filed that motion to facilitate filing the action in State Court pursuant to 42 Pa. C.S.§5103(b)(2). That case is extremely likely to be inundated by pre-trial tactics aimed at preventing trial, which to plaintiff's experience will be treated favorably to the detriment of fairness and rights to

equality and due process. Jurisdiction in No. 09-5747, as in this case, was requested under the severe circumstances to be supported by the state Court's egregious error and deprivals of rights to plaintiffs in a continuing violation that is ongoing and conceivably participated in by the deciding U.S. District Court. One of plaintiff's claims to jurisdiction in the instant case was a tolling of any applicable state statutes of limitations due to the state Courts' abject mishandling and deprival of rights.

The decisions have continually pointed to a hastened ending of cases and truncation of review in order to prevent plaintiffs' efforts to expand the record regarding their claims under equitable estoppel, as supportive of timeliness of filing the complaints. This is claimed in regard to other questions that are treated in a like and similarly unfair manner.

Case No. 09-5747, affirmed at Third Circuit No. 10-1681 was, like this case, dismissed, and the order affirmed, in a continuum of substantial error, and the affirming order is the subject of a petition for writ of certiorari filed herewith.

Said continuum of error is successive and cumulative with the error in this case.

Review is requested in the new petition of affirming, or failure to review, denial of a motion for disqualification validly filed in the district court, and the new petition requests that this case remain open so that the matter of error and appearance of bias and partiality accumulated between these two cases and others be afforded an accurate perceiving by the Court.

Such reasons as are evident in the record. Petitioner makes reference to the new petition for writ of certiorari filed herewith, and incorporates it as if set forth herein.

In support of earlier abuse of discretion, cumulative with said error, it is now evident that the trial court has intentionally utilized Jones v. Zimmerman, 752 F.2d 76, 79 (3d Cir. 1985) (quoting Adkins v. Dupont Co., 335 U.S. 340 (1948) (finding a need for destitution), despite the fact that the great number, and the more recent, of authorities, including decisions of the Third Circuit, hold a more reasonable threshold applicable, namely, that an applicant must show indigence and a hardship imposed, by the filing fee, rather than a

threat of complete destitution, in order to proceed in forma pauperis. Jones And in most contexts, complete destitution is so severe a threshold as to cause any plaintiffs, approvable or not, to be so indigent as to be exponentially less likely to get anywhere with a case, the realities of surviving being what they are. Abuse of discretion is thus proven by this choice of the strictest standard, in a scenario deserving of a just demeanor, what with the severe, conspiratorial harms to the victims, and the impoverishment of the plaintiffs inflicted by persons acting in unison and/or in concert with defendants.

Petitioner, for the above reasons and the reasons stated in the petition for writ of certiorari filed herewith, regarding the same parties, requests in conjunction with this request for rehearing , rehearing also of petition No. 10-227, and petition No. 10-120, which is scheduled for conference on October 29, 2010.

James D. Schneller

Date: October 25, 2010